

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	23-Cr-490 (SHS)
	:	
-v-	:	MEMORANDUM SUPPORTING
	:	DEFENDANT NADINE
ROBERT MENENDEZ, NADINE MENENDEZ,	:	MENENDEZ’S MOTION TO
WALE HANA, AND FRED DAIBES,	:	CONTINUE TRIAL
	:	
Defendants.	:	
	:	
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Defendant Nadine Menendez, through counsel, respectfully submits this memorandum of points and authorities in support of her Motion To Continue Trial. After reviewing a draft of this memorandum, the government advises that it opposes this motion.

By Order entered on August 22, 2024 (Dkt. No. 598), in pertinent part, this Court ordered that “the parties are directed to keep their trial calendars clear for January and February 2025 in order to accommodate a trial of this action at that time” Undersigned counsel, of course, strictly adhered to this directive. In particular, undersigned counsel Coburn has been appointed counsel, under the Criminal Justice Act, to a number of indigent, indicted defendants charged with offenses relating to the events of January 6, 2021 at the United States Capitol, with cases pending in the United States District Court for the District of Columbia. One such case is United States v. Nathaniel Noyce, Case No. 24-cr-328 (ACR), pending before the Honorable Ana C. Reyes of that Court. A criminal complaint was filed against Mr. Noyce on April 16, 2024. Exhibit 1. An eight-count indictment was filed against him on November 17, 2024. Exhibit 2. By Order entered on August 6, 2024 (Exhibit 3), Judge Reyes ordered the parties in the Noyce

case to submit a joint status report by August 27, 2024. The parties did so. Exhibit 4. This Joint Status Report of August 27, 2024 states as follows:

The parties have conferred on a trial date. The defense is unavailable in January or February 2025 based on a trial conflict in the Southern District of New York. The government requests a trial beginning the week of March 3, 10, or 17. The defense requests a start date beginning in late March 2025. The government objects to further delay and is unavailable the week of April 14, 2025. The parties defer to the Court's availability on a trial date during this timeframe.

Relying upon this Joint Status Report, by Minute Order entered on August 27, 2024, Judge Reyes ordered:

MINUTE ORDER as to NATHANIEL NOYCE. The Court hereby ORDERS that trial in this case shall begin on March 17, 2025, at 10 AM. The Court has reserved two weeks for trial. The Court hereby ORDERS the parties to file, on or before September 13, 2024, a joint status report that contains (1) an update on the status of discovery; (2) a proposed schedule for pretrial proceedings, including proposed dates for the pretrial conference; and (3) the parties' views on how long trial is likely to last. Signed by Judge Ana C. Reyes on 8/27/2024. (lcar3) (Entered: 08/27/2024)

Exhibit 5. Approximately two weeks later, on September 13, 2024, pursuant to Order of Judge Reyes, undersigned counsel approved the filing of a second Joint Status Report in the Noyce case. Exhibit 6. This Joint Status Report includes the following language:

The defense understands the need to resolve this case with all deliberate speed. As previously proffered, the defense has been ordered by the Honorable Sidney H. Stein, United States District Judge for the Southern District of New York, to keep all of January and February, 2025, open for trial in the case of United States v. Nadine Menendez, Case Number 1:23-cr-000490-SHS. The defense is concerned, based on proffers from the government in that case, that the Menendez trial could last longer than predicted and extend into March, 2025, which could conflict with the trial date recently set in this case and make final trial preparation for this case difficult to accomplish. However, the defense does not believe it has a predicate, at this time, to move for a continuance of the trial date set in this case.

The trial in the Noyce case remains set for March 17, 2025, in the United States District Court for the District of Columbia.

The trial of Ms. Menendez' codefendants commenced on May 13, 2024. It concluded with a jury verdict on July 16, 2024. Our understanding is that the government believes that the trial of Ms. Menendez will be substantially similar to the trial of her codefendants. Further, Ms. Menendez' trial will, necessarily, be elongated by breaks needed for Ms. Menendez' ongoing treatment for a serious and ongoing medical condition, the details of which have been proffered to the Court under seal. In addition, we contemplate the possibility of a significant affirmative defense case for Ms. Menendez, though no final decision has been made about this.

Accordingly, if trial commences on January 21, 2025, it is unlikely that it would conclude prior to March 17, 2025, the trial date set by Judge Reyes in the Noyce case. Given that the Noyce trial date was set by Judge Reyes before the trial date was set in this case, in adherence to this Court's admonition that undersigned counsel keep January and February, 2025, clear for Ms. Menendez' trial, it is respectfully submitted that the trial in Ms. Menendez' case should be continued to avoid this conflict. I believe I am ethically obliged to make this request, given the trial date in the Noyce case. We will submit a copy of this Motion in the Noyce case in order to make Judge Reyes aware of the issue.

Respectfully submitted,

/s/ Barry Coburn

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Certificate of Service

I hereby certify that on November 25, 2024, this memorandum will be served on all counsel of record via this Court's electronic filing system.

/s/ Barry Coburn
